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June 18, 2007

Federal Trade Commission  
Office of the Secretary  
Room H-135 (Annex S)  
600 Pennsylvania Avenue, N.W.  
Washington, DC 20580

**Re: Endorsement Guides Review, Project No. P034520**  
**Guides Concerning Use of Endorsements and Testimonials in Advertising**

Dear Commissioners:

The Washington Legal Foundation (WLF) appreciates this opportunity to submit comments to the Federal Trade Commission (FTC) in connection with the FTC's on-going review of current regulations and guides, and in particular the FTC's Guides Concerning the Use of Endorsements and Testimonials in Advertising (the "Guides"). WLF is a non-profit public interest law and policy center based in Washington, D.C. with supporters nationwide. WLF promotes free-market policies through litigation, administrative proceedings, publications, and advocacy before state and federal government agencies, including the FTC.

As set forth below, WLF urges the FTC not to make any significant changes to the Guides, which WLF believes provide adequate guidance regarding the requirements of Section 5 of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 45, as they apply to use of endorsements and testimonials in advertising. In particular, nothing in the two cited studies commissioned by the FTC suggest a need for significant changes. Indeed, WLF respectfully suggests that the studies have little relevance to the issue at hand because they focus on what consumers' remember about an advertisement they have previously read, rather than on what the advertisement actually says. The First Amendment flatly bars any effort by the FTC to regulate factually accurate advertising based on the possibility that consumers might later misremember what the advertisement said or might respond in ways that some would deem inappropriate.

WLF also urges the FTC not to make changes to Section 255.5 of the Guides; Section 255.5 states that an advertiser need not disclose the payment of compensation to well-known personalities. In a 2003 petition Commercial Alert urged the FTC to create an exception to Section 255.5 to cover situations in which consumers might not assume that the well-known personality is being compensated for his or her endorsement. The FTC has requested comments regarding consumer expectations regarding compensation paid to celebrities who speak favorably about a product outside the context of an advertisement. WLF believes that,





















